



4310-55

DEPARTMENT OF THE INTERIOR

[FWS-R2-FHC-2014-N178; FVHC98120208440-XXX-FF02ETTX00]

Texas City Y Oil Spill; Notice of Intent to Conduct Restoration Planning

AGENCY: Interior.

ACTION: Notice of Intent.

SUMMARY: Under the Oil Pollution Act (OPA), Federal and State trustees for natural resources are authorized to assess natural resource injuries resulting from an oil discharge or the substantial threat of discharge, as well those injuries that result from response activities. The trustees develop and implement a restoration plan to identify and quantify injuries to natural resources and the restoration required to compensate for those injuries. This notice announces the intent of the Federal and State trustees to conduct restoration planning regarding the discharge of oil from the Kirby Barge 27706 resulting from the collision with an inbound bulk carrier, the M/V SUMMER WIND, an incident that occurred in the Houston Ship Channel near Texas City, Texas on March 22, 2014.

FOR FURTHER INFORMATION CONTACT: Benjamin Tuggle, Regional Director, Southwest Region, U.S. Fish and Wildlife Service, ((505) 248-6911).

SUPPLEMENTARY INFORMATION: The Texas City Y Oil Spill occurred on March 22, 2014, in Galveston Bay in the vicinity of the Houston Ship Channel near Texas City, Texas, when the inbound bulk carrier M/V SUMMER WIND collided with the oil tank-barge KIRBY 27706. At the time of the collision, the M/V MISS SUSAN was towing the oil tank-barges KIRBY 27705 and KIRBY 27706. As a result of the collision, the number 2 starboard tank of KIRBY 27706 was punctured discharging approximately 168,000 gallons (4,000 barrels) of intermediate fuel oil (IFO-380) into Galveston Bay and subsequently entered the waters of the Gulf of Mexico (referred to as the “Texas City Incident”).

Pursuant to Section 1006 of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2706, Federal and State trustees for natural resources are authorized to (1) assess natural resource injuries resulting from a discharge of oil or the substantial threat of a discharge and from response activities, and (2) develop and implement a plan for restoration of such injured resources and their services. The Federal trustees are designated pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR 300.600) and Executive Order 12777. State trustees are designated by the governors of each State pursuant to the NCP, 40 CFR 300.605, OPA 33 U.S.C. 2706(b)(3), Clean Water Act (CWA), 33 U.S.C. 1321(f)(5), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA; 42 U.S.C. 9607(f)(2)(B)).

The following agencies are designated natural resources trustees under OPA and are currently acting as trustees for this Incident: The United States Department of the Interior (DOI), as represented by the United States Fish and Wildlife Service and the National Park Service; the National Oceanic and Atmospheric Administration (NOAA) on behalf of the United States Department of Commerce; and the Texas Parks and Wildlife Department (TPWD), Texas Commission on Environmental Quality (TCEQ) and Texas General Land Office (GLO) for the State of Texas (collectively, the Trustees). In addition to acting as Trustees for this Incident under OPA, the State of Texas is also acting pursuant to its applicable state laws and authorities, including the Texas Oil Spill Prevention and Response Act of 1991, Tex. Nat. Res. Code Chapter 40.

The Responsible Party (RP) identified for this Incident thus far is Kirby Inland Marine, LP (“Kirby”), owner of the M/V MISS SUSAN, KIRBY 27705 and, and KIRBY 27706. Pursuant to 15 CFR 990.14(c), the Trustees have invited the RP identified above to participate in a cooperative Natural Resource Damage Assessment (NRDA) process. To date, the Trustees have coordinated with Kirby representatives on activities undertaken as part of the NRDAR process.

The Trustees initiated the Preassessment Phase of the NRDA in accordance with 15 CFR 990.40 to determine if they have jurisdiction to pursue restoration under OPA and, if so, whether it is appropriate to do so. During the Preassessment Phase, the Trustees collected and analyzed, the following: (1) Data reasonably expected to be necessary to make a determination of jurisdiction and a determination to conduct restoration planning, (2) ephemeral data, and (3) information

needed for assessment activities as part of the Restoration Planning Phase. The collection and analysis of the data and information listed above continues to date.

Under the NRDA regulations applicable to OPA, 15 CFR part 990 (NRDA regulations), the Trustees prepare and issue a notice of intent to conduct restoration planning (notice) to demonstrate that conditions have been met that establish that the Trustees have jurisdiction over this matter and that restoration of natural resources is feasible and appropriate.

Pursuant to 15 CFR 990.44, this notice announces that the Trustees have determined to proceed with restoration planning to fully evaluate, assess, quantify and develop plans for restoring, replacing or acquiring the equivalent of injured natural resources and services losses resulting from the Texas City Y Incident. The restoration planning process will include collection of information for evaluating and quantifying injuries, and use of that information to determine the need for, and type and scale of restoration actions.

Determination of Jurisdiction

The Trustees have made the following findings pursuant to 15 CFR 990.41:

1. The Texas City Y Incident resulted in discharges of oil into and upon navigable waters of the United States, including the Gulf of Mexico, as well as adjoining shorelines, all of which constitute an “incident” within the meaning of 15 CFR 990.30.

2. The discharge(s) are not permitted pursuant to federal, state, or local law; are not from a public vessel; and are not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, (43 U.S.C. 1651 *et seq.*).

3. Natural resources under the trusteeship of the Trustees have been and continue to be injured or threatened as a result of discharged oil and associated removal efforts. The discharged oil is harmful to natural resources exposed to the oil, including aquatic organisms, birds, wildlife, vegetation, and habitats. Discharged oil and the response activities to address the discharges of oil have resulted in adverse effects on natural resources in and around the coastal waters of Texas and along its adjoining shorelines, and impaired services that those resources provide. The full extent of potential injuries is currently unknown; however current natural resources and resource services that have been impacted due to the discharged oil include but are not limited to the following:

- Over 160 miles of shoreline habitats, including salt marshes, sandy beaches, and mangroves.
- A variety of wildlife, including birds, and marine mammals.
- Lost human use opportunities associated with various natural resources in the Gulf region, including fishing, swimming, beach-going, and viewing of birds and wildlife.
- Waters of the Gulf of Mexico and adjoining coastal waters of the State.

- Various other biota, including benthic communities and fish.
- Water column habitat.

Accordingly, the Trustees have determined they have jurisdiction to pursue restoration under OPA.

Determination to Conduct Restoration Planning

1. The Trustees have made the following findings pursuant to 15 CFR 990.42. Observations and data collected pursuant to 15 CFR 990.43 demonstrate that injuries to natural resources and the services they provide have resulted from the Texas City Y incident; however, the nature and extent of such injuries has not been fully determined at this time. The Trustees have identified numerous categories of impacted and potentially impacted resources, including marine mammals and birds, as well as their habitats. Potentially or actually impacted habitats include but are not limited to wetlands, marshes, sand beaches, bottom sediments and the water. Impacts to these resources have or are anticipated to affect human use of these affected resources or habitats. The Trustees have been conducting, and continue to conduct, activities to evaluate injuries and potential injuries within these categories. More information on these resource categories, including assessment work plans developed jointly by the Trustees and the RP, if any, and information gathered during the Preassessment Phase, will be available in the Administrative Record (AR), as discussed below. The full nature and extent of injuries will be determined during the injury assessment conducted as part of the Restoration Planning Phase.

2. Response actions employed for this spill included containment, skimming of oil and other removal operations. These response actions have not addressed and are not expected to address all injuries resulting from the discharges of oil. Although response actions were initiated soon after the spill, they were unable to prevent injuries to many natural resources. In addition, some of these response actions have caused or are likely to cause injuries to natural resources and the services they provide, including the impairment of sensitive marshes, beaches, and other habitats and impacts to human uses of the resources. While injured natural resources may eventually recover naturally to the condition they would have been in had the discharges not occurred, interim losses did occur and will persist until baseline conditions are achieved. In addition, there have been losses of and diminution of human uses of the resources resulting from the impacts to the natural resources and from the response actions themselves.

3. Feasible restoration actions exist to address the natural resource injuries and losses, including lost human uses, resulting from the discharges of oil. Assessment procedures are available to scale the appropriate amount of restoration required to offset these ecological and human use service losses. During the restoration planning phase, the Trustees will evaluate potential projects, determine the scale of restoration actions needed to make the environment and the public whole, and release a draft Restoration Plan for public review and comment.

Based upon these determinations, the Trustees intend to proceed with restoration planning for the Texas City Y Incident.

Administrative Record

The Department of the Interior, acting on behalf of the Trustees, has opened an Administrative Record (AR) in compliance with 15 CFR 990.45 and applicable state authorities. The AR is publicly accessible and includes documents considered by the Trustees during the NRDA and restoration planning performed in connection with the Incident. The AR will be augmented with additional information over the course of the NRDA process. The administrative record is available through the following location in electronic format:

http://www.cerc.usgs.gov/orda_docs/DamageCase.aspx?DamageCaseId=388

Opportunity to Comment

In accordance with 15 CFR 990.14(d) and state authorities, the Trustees will provide opportunities for public involvement in the restoration planning for the Incident. The opportunities for public involvement will be addressed in future notices and announcements.

Author

The primary author of this notice is Chip Wood.

Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) and the implementing Natural Resource Damage Assessment found at 15 CFR part 990.

**Joy E. Nicholopoulos,
Acting Regional Director.**

[FR Doc. 2015-00231 Filed 01/09/2015 at 8:45 am; Publication Date: 01/12/2015]